

APPEAL NO. 93445

At a contested case hearing held in (city), Texas, on April 13, 1993, the hearing officer, (hearing officer), determined, after hearing the testimony of the appellant (claimant), the employer, and the employer's bookkeeper, that claimant failed to prove by a preponderance of the evidence that he was injured in the course and scope of his employment on (date of injury), and further failed to notify his employer of the alleged injury not later than 30 days after (date of injury). In his untimely appeal, claimant generally disagrees with the hearing officer's determination of the two disputed issues. The respondent (carrier) asserts that claimant's request for review is untimely and also urges our affirmance of the hearing officer's decision.

DECISION

Finding that claimant's request for review was not timely filed, our jurisdiction is not invoked and the hearing officer's decision is affirmed by operation of law.

Our reasoning in this case is the same as was discussed in Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992. The Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.41(a) (Vernon Supp. 1993) (1989 Act), provides, in part, that a party desiring to appeal the decision of the hearing officer shall file a written appeal with the appeals panel not later than the 15th day after the date the hearing officer's decision is received from the Texas Workers' Compensation Commission's (Commission) hearings division. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)) provides that a request for review be filed with the Commission's central office in Austin not later than the 15th day after receipt of the hearing officer's decision. Rule 143.3(c) provides that a request shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and is received by the Commission not later than the 20th day after such date. The hearing officer's decision in this case, signed on April 16, 1993, was distributed by the Commission's hearings division on April 23, 1993. Claimant does not indicate the date he received the decision and thus we apply Rule 102.5(h) which provides, in part, that "the commission shall deem the received date to be five days after the date mailed." Accordingly, claimant is deemed to have received the decision on April 28, 1993, and his appeal was required to be filed with the Appeals Panel not later than 15 days later, that is, on May 13, 1993. Claimant's request for review, correctly addressed, bore the postmark date of May 31, 1993, and was received by the Commission on June 2, 1993.

Since the claimant's request for review was not mailed until May 31, 1993, his appeal was untimely and, consequently, the jurisdiction of the Appeals Panel was not properly invoked. Pursuant to Article 8308-6.34(h) and Rule 142.16(f), the decision of the hearing officer has become final.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge